

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 480 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

KHAKHARIYA VISTAR PANCHAT VARG KELAVANI UTTEJAK MANDAL

Versus

DAHYABHAI A PARMAR

Appearance:

MR MUKTESH V PATEL for Petitioners

MR MC BAROT for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 27/08/97

ORAL JUDGEMENT

1. The petitioners before this court are the original defendants and respondent Dahyabhai Ashabhai Parmar is the original plaintiff. This Civil Revision Application under Section 115 of the Code of Civil Procedure is directed against the judgment and order dated 29th of January, 1994, passed by Civil Judge, Junior Division at Kadi in Regular Darkhast No. 30 of

1993. By the said order, the Executing Court has ordered warrant to issue against the original defendants, namely, Khakhariya Vistar Pachhat Varg Kelavani Uttejak Mandal, at village Meda - Adarej, taluka Kadi.

2. It appears that the respondent No.1 - the original plaintiff was working as Rector of Khakhariya Vistar Pachhat Varg Kelavani Uttejak Mandal instituted Regular Civil Suit No. 13 of 1980 in the court of Civil Judge, Junior Division, Kadi to recover the amount of Rs. 9,752.26ps. The suit was instituted against the institution and its trustees allegedly on the ground that while working as Rector of the said Kelavani Uttejak Mandal, he has advanced the various amounts totalling to Rs. 9,652.26np. In such suit which was filed by the respondent - plaintiff, the court of Civil Judge, Junior Division, passed a decree for the full amount and Regular Civil Appeal No. 149 of 1983 was preferred by the present petitioner and its trustees. The said appeal was dismissed on 5th of January, 1987 and thereafter Regular Darkhast No. 20 of 1993 was filed in the court of Civil Judge, Junior Division and in such Darkhast it was prayed that the decretal amount with cost and interest would work out at Rs.18,816.09ps and that such amount should be recovered from the movable properties and/or immovable properties of the trust, namely, Sant Shri Rohidas Vidyarthi Ashram Meda, Adarej, being parcels of land situated at Meda, Adarej and that such immovable property should be attached and sold by public auction till the amount due and payable to the plaintiff is realised. In the immovable properties, two survey numbers were shown being Survey Nos.1292 and 1121 admeasuring 2 hectare 30 ARE and 2 hectare and 20 ARE respectively. It was also prayed that such properties be sold by public auction and the amount due and payable should be paid to the judgment creditor. The Civil Judge, Junior Division, Kadi, thereupon passed the order that on process being paid, warrant be issued against defendant No.1 which was the present petitioner before the court. It is such order of issuance of warrant against the public trust which is under challenge in the present Civil Revision Application.

3. Mr. M.V. Patel, learned counsel appearing for the petitioners has submitted before the court that the order passed by the Executing Court is not maintainable in law in view of the fact that the land in question was granted to the trust as a New Tenure land under the terms and conditions of the original grant. It appears that Collector, Mehsana, vide order dated 11th of November, 1964 passed the order after perusing the report of Taluka

Development Officer dated 22nd October, 1964 as well as opinion of District Development Officer to the effect that Survey No. 1292 was gauchar land but the same was covered on all sides by agricultural land and the land was in fact not being utilised for gauchar. Both the officers, therefore, opined that if the said survey numbers are granted to the Ashram at a nominal value of Rs.1/-, there is no objection and that in fact they recommended that the land should be granted. It appears that pursuant to such order, Collector, Mehsana, vide its order dated 28th September, 1972 granted 8 acres of land out of survey No. 1121 to Sant Shri Rohidas Vidyarthi Ashram through its Sanchalak - Dahyabhai Ashabhai Parmar on the term and condition stated in the said order. The very first terms and conditions is that the land was granted as New Tenure land and that the same was to be utilised only for the purpose of chatralaya of backward class persons. Various other terms and conditions were also laid down, with which this court is not directly concerned. Against the said order, even Sarpanch, Meda, Adarej Gram Panchayat preferred Revision Application before the Special Secretary, who by its order dated 24th April, 1973 rejected the said Revision Application. In such Revision Application Sant Shri Rohidas Vidyarthi Ashram was represented through its Sanchalak (Rector) Dahyabhai Ashabhai Parmar.

4. The learned counsel appearing for the petitioners has urged before this court that no order for attachment and sale by public auction of the two parcels of land in question can be passed even by the Executing Court as the lands were New Tenure land and granted to a public trust for specific purpose. On going through the orders passed to which I have already made reference, there is no dispute about the fact that the said parcels of land were granted as New Tenure land to Shri Khakhariya Vistar Pachhat Varg Kelavani Uttejak Mandal and the same were not liable to be attached or sold at public auction, they being New Tenure land. It goes without saying that when the land is granted as New Tenure land, the same cannot be attached and sold at public auction as that would amount to violating the main condition, namely, that the land was granted to the trust as New Tenure Land.

5. Mr. M.C. Barot on the other hand appearing for the respondent No.1, namely Dahyabhai Ashabhai Parmar who was once the Rector of the petitioner No.1 trust seriously contended before the court that the land in question could not have been allotted to the first petitioner as such allotment is prohibited by law. In the first instance, one fails to understand as to how a

person who has acted as a Rector of petitioner No.1 Trust which is a trust for backward class Kelavani Uttej Mandar can object to the grant of land by government to such trust which is established for the purpose of upliftment of backward class people. He has very vehemently submitted before the court that the offer of land by the government to the trust was prohibited under Section-43 of the Bombay Tenancy and Agricultural Lands Act, 1948, which provided for restriction of transfers of land purchased by a tenant or sold to any person under Section 32P or 64. By the said Section, a prohibition is enacted to the effect that no land or any interest therein purchased by a tenant under Section 17B, 32, 32F, 32I, 32-O or sold to any person under Section 32P or 64 shall be transferred or shall be agreed by an instrument in writing to be transferred, by sale, gift, exchange, mortgage, lease or assignment, without the previous sanction of the Collector. In my opinion, this Section 43 does not in any way prohibit the government from disposing of the land reserved for gauchar purposes when the same is not capable of being used for the purpose of gauchar. The aforesaid objection, therefore, has no merit more particularly when it is coming from a rector of hostel which is meant for the backward class people. Secondly, Mr. Barot has also relied upon Section-63 of the said Act of 1948 and contended that save as provided in the said Act of 1948, no sale, gift, exchange or lease of any land or interest therein, or no agreement made by an instrument in writing for the sale, gift, exchange, lease or mortgage of any land or interest therein, shall be valid in favour of a person who is an agriculturist or who being an agriculturist cultivates personally land not less than the ceiling area whether as an owner or tenant or partly as owner and partly as tenant or who is not an agricultural labourer. In my opinion, this Section also has no application because ultimately the land in question is at the instance of the respondent himself permitted to be converted into a non-agricultural land and the land is allotted to the petitioner No.1 which is a public trust of backward class people. In that view of the matter, this objection of Mr. M.C. Barot also has no legs to stand and shall have to be rejected. Excepting the aforesaid two objections, Mr. Barot has not raised any objection.

6. In view of the aforesaid factual and legal situation and specific terms and conditions stipulated in the order of grant, the submission of the learned counsel appearing for the petitioners is right, just and proper and is required to be accepted. The order passed by the Executing Court in Regular Darkhast No. 20 of 1993

attaching and putting to public auction the land bearing survey Nos. 1292 and 1121 of village Meda - Adarej is bad in law and cannot be sustained and to that extent the same is quashed and set aside. It will be open to the decree holder to execute the decree against any other property of the trust but not against the aforesaid two properties which were granted on specific terms and conditions.

7. In the result, this Civil Revision Application succeeds. The order of issuance of warrant against the aforesaid immovable properties is hereby quashed and set aside. Rule is made absolute to the aforesaid extent only. There shall be no order as to costs.

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